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STATE REGISTER

STATE OF MINNESOTA

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VOLUME 4, NUMBER 8

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Pages 209-228

STATE REGISTER

Volume 4 Printing Schedule for Agencies

Issue Number	*Submission deadline for Executive Orders, Adopted Rules and **Proposed Rules	*Submission deadline for State Contract Notices and other **Official Notices.	Issue Date
SCHEDULE FOR VOLUME 4			
9	Monday Aug 20	Monday Aug 27	Monday Sept 3
10	Monday Aug 27	Tuesday Sept 4	Monday Sept 10
11	Tuesday Sept 4	Monday Sept 10	Monday Sept 17
12	Monday Sept 10	Monday Sept 17	Monday Sept 24

*Deadline extensions may be possible at the editor's discretion; however, none will be made beyond the second Wednesday (12 calendar days) preceding the issue date for rules, proposed rules and executive orders, or beyond the Wednesday (5 calendar days) preceding the issue date for official notices. Requests for deadline extensions should be made only in valid emergency situations.

**Notices of Public Hearings on proposed rules are published in the Proposed Rules section and must be submitted two weeks prior to the issue date.

Instructions for submission of documents may be obtained from the Office of the State Register, Suite 415, Hamm Building, 408 St. Peter Street, St. Paul, Minnesota 55102.

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The *State Register* is the official publication of the State of Minnesota, containing executive orders of the governor, proposed and adopted rules of state agencies, and official notices to the public. Judicial notice shall be taken of material published in the *State Register*.

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MCAR AMENDMENTS AND ADDITIONS

The following is a cumulative listing of all proposed and adopted rules published in Volume 4 of the *State Register*. The listing is arranged in the same order as the table of contents of the *Minnesota Code of Agency Rules* (MCAR). All adopted rules published in the *State Register* and listed below amend the rules contained in the MCAR set. Both proposed

temporary and adopted temporary rules are listed here although they are not printed in the MCAR due to the short term nature of their legal effectiveness. During the term of their legal effectiveness, however, adopted temporary rules do amend the MCAR.

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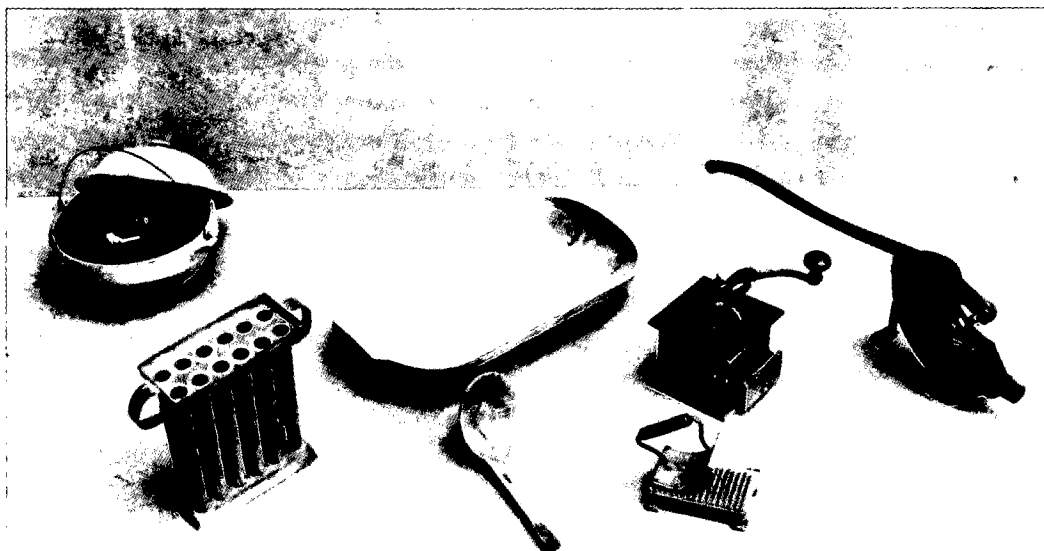
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12 MCAR § 2.047 E.2.t. (proposed temporary) 218



A FEW ITEMS used in a pioneer household are shown above. From left to right: a sausage stuffer, a coffee grinder, a pleating iron, a wooden bowl and spoon, a candle mold, and a rather fancy glazed pottery kettle with a cover. Many of these utensils can be seen in the Minnesota Historical Society's pioneer gallery.

RULES

The adoption of a rule becomes effective after the requirements of Minn. Stat. § 15.0412, subd. 4, have been met and five working days after the rule is published in the *State Register*, unless a later date is required by statutes or specified in the rule.

If an adopted rule is identical to its proposed form as previously published, a notice of adoption and a citation to its previous *State Register* publication will be printed.

If an adopted rule differs from its proposed form, language which has

been deleted will be printed with strike outs and new language will be underlined, and the rule's previous *State Register* publication will be cited.

A temporary rule becomes effective upon the approval of the Attorney General as specified in Minn. Stat. § 15.0412, subd. 5. Notice of his decision will be published as soon as practicable, and the adopted temporary rule will be published in the manner provided for adopted rules under subd. 4.

Department of Agriculture Dairy Industries Division

Adopted Rules for the Testing of Milk on the Basis of Protein

The rules 3 MCAR §§ 1.1331-1.1334, proposed and published at *State Register*, Volume 3, Number 23, pp. 1217-1220, December 11, 1978 (3 S.R. 1217) are adopted with the following amendments:

Rules as Adopted

Chapter Fifty-eight: ~~Purchase~~ Testing of Milk on the Basis of Protein

3 MCAR § 1.1331 General.

A. Purpose and ~~Authority~~ authority. The rules contained herein are prescribed pursuant to Minn. Stat. § 32.25 by the commissioner to provide ~~an optional method for the purchasing of whole milk; the purchase price of which shall be calculated upon the basis of 100 pounds of whole milk at 3.5 pounds of milk fat and 3.2 pounds of protein per hundredweight; for testing protein content of whole milk.~~

B. Definitions. For purposes of these rules the following definitions and those in Minn. Stat. § 32.01 shall apply:

1. "Producer" means any person who operates a dairy herd or herds producing milk commercially and whose milk is sold to, or received or handled by, a purchaser as defined in this rule.

2. "Purchaser" means any person purchasing whole milk from a producer and defined as a dairy plant in Minn. Stat. § 32.01, subd. 6.

~~3 MCAR § 1.1332 Criteria for Purchasing Milk on the Basis of Protein.~~

ALTERNATIVE "1" FOR 3 MCAR § 1.1332 A:*

A. Any purchaser may base the price paid for such milk on both the milk fat and protein content of such milk; provided:

1. The purchase price is determined by the declared purchase price of 100 pounds of whole milk calculated at 3.5 pounds of milk fat and 3.2 pounds of protein content per hundredweight;

2. That when the milk fat test or the protein test of such whole milk varies from the aforementioned weights per hundredweight, a uniform adjustment in the declared purchase price shall be made for each one-tenth of one percent of milk fat or protein above or below the aforementioned weights;

ALTERNATIVE "2" FOR 3 MCAR § 1.1332 A:*

A. Any purchaser may base the price paid for such milk on both the milk fat and protein content of such milk; provided:

1. The purchase price is determined by the declared purchase price for 100 pounds of whole milk calculated at 3.5 pounds of milk fat and 3.2 pounds of protein content per hundredweight;

2. That price adjustments for milk fat shall be set pursuant to Minn. Stat. § 32.25, subd. 1;

3. That when the protein test of such whole milk varies from the 3.2 pounds per hundredweight, a uniform adjustment in the declared purchase price shall be made for each one-tenth of one percent of protein above 3.2 pounds per hundredweight;

ALTERNATIVE "3" FOR 3 MCAR § 1.1332 A:*

A. Any purchaser may base the price paid for such milk on both the milk fat and protein content of such milk; provided:

1. The purchase price is determined by the declared purchase price of 100 pounds of whole milk calculated at 3.5 pounds of milk fat and 3.0 to 3.2 pounds of protein content per hundredweight;

2. That when the milk fat test or the protein test of such whole milk varies from the aforementioned weights per hundredweight, a uniform adjustment in the declared purchase price shall be made for each one-tenth of one percent of milk fat or protein above or below the aforementioned weights;

KEY: RULES SECTION — Underlining indicates additions to proposed rule language. **Strike outs** indicate deletions from proposed rule language. **PROPOSED RULES SECTION** — Underlining indicates additions to existing rule language. **Strike outs** indicate deletions from existing rule language. If a proposed rule is totally new, it is designated "all new material."

RULES

NOTE: 3 MCAR § 1.1331 A. would read:

"... 3.5 pounds of milk fat and 3.0 to 3.2 pounds of protein per hundredweight."

B. The purchaser shall not discriminate in the buying of such milk pursuant to Minn. Stat. § 32.11 and all producers selling to such a purchaser shall be subject to the provisions of this rule.

3 MCAR § 1.1333 1.1332 Testing procedures.

A. Samples collection and handling. Samples to be used for the testing of protein content shall be collected and handled in the same manner as samples used for bacterial tests as prescribed in "Standard Methods for the Examination of Dairy Products," Thirteenth Edition, published by the American Public Health Association. The minimum size for a fresh milk sample shall be two ounces (0.0592 liter).

B. Sample testing.

1. Only the following methods, as prescribed by the Association of Official Association of Analytical Chemists, shall be used in the testing of whole milk for protein content pursuant to these rules:

a. Kjeldahl, Method No. 1.049 and 16.036, total nitrogen;

b. Dye binding, Method No. 16.037, acid orange 12;

c. Pro-milk method for determination of protein in milk, amido black 10B, Journal of the Official Methods of Analysis of the Association of Official Analytical Chemists (Vol. 58, No. 4), 1975;

d. Infra-red. Milk Analysis, Method No. 16.097 and 16.080, part 2 protein; or

e. Any other method of equal or greater accuracy approved by the Association of Official Association of Analytical Chemists and approved by the commissioner.

2. Only testing equipment accurately calibrated as prescribed by the methods for calibration set forth in the above cited methods shall be used on conducting sample testing for protein content pursuant to these rules.

3. The commissioner may inspect and test any testing equipment with standardized solutions to determine their accuracy.

4. Frequency of sampling and testing.

a. When the calculation of protein content for payment for whole milk purchased tested pursuant to these rules Minn. Stat. § 32.25 is based on a one (1) month period of production, four (4) or more test results on random samples taken from different deliveries shall be used to compute the arithmetic average of those test samples.

5. Sample retention and handling. All samples collected and used for protein testing pursuant to these rules shall be held at temperatures of 32° F to 40° F until tested and shall be returned to that temperature within two (2) hours of

the last test made on the sample. All samples shall be retained at the place of testing until 3:00 p.m. of the day following the last testing date of the sample.

C. Test records.

1. Purchasers shall provide producers with a statement of the protein content of the milk with or in each settlement statement.

2. ~~When whole milk is found to be abnormal pursuant to~~ If the purchaser disqualifies abnormal milk for testing on a protein basis when whole milk is found to be abnormal pursuant to 3 MCAR § 1.1188, the purchaser's records shall indicate the results of the confirmatory tests. Only confirmatory tests approved pursuant to 3 MCAR § 1.1188 shall be used in determining the ineligibility of whole milk purchased tested on a protein basis.

3. All test records and results for protein content pursuant to these rules ~~and the computation of payments to producers selling whole milk on a protein basis~~ shall be retained by the purchaser for a period of not less than one (1) year. All records relative to such tests ~~and payments~~ shall be available for inspection during normal working or other reasonable hours by persons authorized by the commissioner.

3 MCAR § 1.1334 1.1333 Licensed testers.

A. All persons engaged in the sampling and/or testing of whole milk ~~to determine its value for payment to producers for protein and purchase~~ of same shall be licensed by the commissioner.

B. Any person desiring to secure such a license shall make application on forms provided by the commissioner. Before a license is issued, the commissioner shall determine that the applicant is competent and qualified to use such testing apparatus for determining protein content of whole milk and to make accurate tests with them.

C. Every license issued by the commissioner shall be for a period ending on the December 31 following issuance and shall not be transferrable.

D. The fee for each initial license shall be \$15 and each renewal thereof shall be \$6 and shall be paid to the commissioner before any license or renewal thereof is issued.

E. The commissioner shall suspend or cancel any license issued pursuant to these rules, after notice and hearing, found to be in violation of Minn. Stat. ~~see~~ § 32.25 or these rules.

~~*Testimony will be received on all three alternatives. Based upon the testimony at the hearings, one alternative will be promulgated by the Commissioner.~~

PROPOSED RULES

Pursuant to Minn. Stat. § 15.0412, subd. 4, agencies must hold public hearings on proposed new rules and/or proposed amendment of existing rules. Notice of intent to hold a hearing must be published in the *State Register* at least 30 days prior to the date set for the hearing, along with the full text of the proposed new rule or amendment. The agency shall make at least one free copy of a proposed rule available to any person requesting it.

Pursuant to Minn. Stat. § 15.0412, subd. 5, when a statute, federal law or court order to adopt, suspend or repeal a rule does not allow time for the usual rulemaking process, temporary rules may be proposed. Proposed temporary rules are published in the *State Register*, and for at least 20 days thereafter, interested persons may submit data and views in writing to the proposing agency.

Public Hearings on Agency Rules September 3-7, 1979

Date	Agency and Rule Matter	Time & Place
Sept. 5	Board of Chiropractic Examiners Provisions Relating to Continuing Education Hearing Examiner: Harry Seymour Crump	1:00 p.m., Rm. 105, MN Health Dept. Bldg., 711 Delaware St. S.E., Minneapolis, MN.

Department of Education Vocational-Technical Division

Proposed Temporary Rules Governing the Vocational Aid Program

Request for Public Comment

The State Board of Education has proposed the following temporary rules in response to Minn. Stat. chs. 121 and 124 (1978) as amended by Laws of 1979, ch. 334, Art. V §§ 1-3, 9-12 and 16-22. Authority to adopt such temporary rules is provided by Minn. Stat. § 121.21, subd. 6 as amended by Laws of 1979, ch. 334, Art. V § 1 and by Minn. Stat. § 15.0412, subd. 5. Additionally, state agencies are directed by Minn. Stat. § 15.0412, subd. 5, to repeal rules which are not in compliance.

All interested parties are hereby afforded the opportunity for 20 days after publication of this material in the *State Register* to submit data and views on the proposed by writing to Robert Van Tries, Assistant Commissioner for Vocational-Technical Education, 564 Capitol Square Building, 550 Cedar Street, St. Paul, MN 55101. Such publication is hereby ordered.

Any written materials received by the agency shall become part of the hearing record in the final adoption of the temporary rule.

August 7, 1979

Howard B. Casmev
Commissioner of Education

Temporary Rule as Proposed

Chapter Six: Post-Secondary Vocational-Technical Education

5 MCAR § 1.0104 Foundation aid.

A. A school district operating an area vocational-technical institute shall be eligible to receive post-secondary vocational foundation aid for all students attending approved post-secondary vocational-technical programs.

AVTIs shall notify the Commissioner in writing of the intent to begin a part-time offering of a program at least 30 days prior to commencing instruction in the program.

B. Average daily membership estimates shall be included in the annual budget request. These estimates shall be derived from uniform student accounting reports and that shall be the basis for beginning foundation aid payments.

Adjustments to estimated average daily membership shall be reported by each AVTI to the Division of Vocational-Technical Education by the first of September, December, March and June.

C. Changes in estimates as authorized by Minn. Stat. § 124.11 shall be approved by the assistant commissioner of vocational-technical education before payment is authorized by the department.

D. Final adjustment data shall be submitted by August 15 of each year.

E. Only days in which school is open and students are under the supervision and guidance of teachers and for educational purposes are eligible for foundation aid. Snow days are not to be counted.

F. Tuition and fees.

1. Deductible fees shall include all charges that are uniformly assessed all students. Charges for materials or equipment that becomes the property of the student shall not be considered a fee.

~~2. All tuition paid in advance shall be refundable on a pro rata basis as of the day of official termination.~~

2. No tuition shall be charged to handicapped/disadvantaged students for the additional hours of instruction received beyond the approved program length as established

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PROPOSED RULES

by Minn. Stat. § 124.562, subd. 2, as amended by Laws of 1979, ch. 334, article V, section 10.

3. Students shall have their tuition prorated for less than or more than the regular instructional schedule. Tuition of \$128 per 60 school day quarter shall be prorated at \$2.13 per day or 35¢ per hour for part-time or extended-time programs, for quarters more or less than 60 days and for programs utilizing individualized instruction.

4. Collection of tuition shall be on the basis of four periods per year as determined by the local calendar. No single period shall exceed 65 school days. Tuition may not be demanded more than 15 consecutive school days in advance of the time period but a student may pay in advance. Tuition may be delayed only upon initial application for tuition subsidy in any given year or guaranteed receipt from an agency.

5. A late penalty may be charged not to exceed \$10.00 per period established pursuant to F.4. of this rule. Penalty payments shall be deducted from foundation aid. The penalty assessment period is the period of time between the date tuition was demanded and the commencement of classes.

6. The total amount of tuition deducted from foundation aid shall be calculated on the total number of ADM's in the fiscal year. This calculation shall be made at the time of the final foundation aid adjustment, with tuition deficits being charged to local funds. Tuition loss due to deferment during student application for tuition subsidy shall not be deducted from foundation aid. Students shall not apply for a tuition subsidy more than once during a collection period.

7. Students on internships shall pay tuition for the time period claimed for foundation aid. Daily hours shall not exceed six unless the students are fully supervised under personnel provided by the institute.

8. Each district shall have an attendance policy. Students who notify the school of their withdrawal shall be dropped from the roll upon date of notification. Students absent for 15 consecutive school days shall be classified as withdrawn.

9. Students in continuous enrollment programs may be maintained on the roll for a vacation or a personal leave not to exceed 15 consecutive school days.

G. Upon prior approval of the Commissioner, a district may add additional hours for membership not to exceed 10% of the approved hours of the program for disadvantaged or handicapped students. Handicapped students are those who are mentally retarded, hard of hearing, deaf, speech impaired, visually impaired, orthopedically impaired, or persons with specific learning disabilities, who by reason thereof require special education and related services, and who, because of their handicapping condition, cannot succeed in the regular vocational educational program without special education assistance or who require a modified vocational education program. Disadvantaged students are those who have academic or economic handicaps and who require special services and assistance in order to enable them to succeed in vocational education programs.

H. Unless otherwise exempt from tuition, students who begin during the quarter shall pay tuition as of the date of entry based upon the prorated formula established in 5 MCAR § 1.0104 F.3. For such students the fifteen day refund established by Minn. Stat. § 124.565, subd. 3, as amended by Laws of 1979, ch. 334, article V, section 20 shall commence with the date of scheduled entry.

Temporary Rule as Proposed (all new material)

5 MCAR § 1.01051 Contingency fund.

A. Scope.

1. The contingency fund shall be utilized to promote new or expanding industry in Minnesota which creates ten or more new jobs in any given six month period. The employees sought to be trained must be in one general work classification, such as production workers, office personnel or management.

2. For post-secondary program purposes the contingency fund shall be limited for start-up costs of new and unique programs and meet the requirement of program approval in 5 MCAR § 1.0102.

3. For adult vocational program purposes the contingency fund shall be limited to operational costs of programs. In addition to meeting the requirements of program approval in 5 MCAR § 1.0112 adult vocational programs utilizing the contingency fund shall also meet the criteria set forth in B. below.

B. Criteria.

The following criteria shall be met before approval will be granted:

1. The AVTI considering a program shall submit the proposal to the Department of Economic Development for their recommendation. The recommendation shall become part of the proposal submitted to the Division of Vocational-Technical Education.

2. All training will be conducted by an AVTI.

3. The company requesting a training program must first recall all personnel qualified in the area for which training is to be provided. Training shall be made available but not limited to non-qualified personnel not recalled by the company.

4. The AVTI considering a program shall consult with the Department of Economic Security to:

a. ascertain that no trained persons are available to fill the positions requested by industry and

b. identify potential students for the training program.

The AVTI considering a program shall also ascertain that no current graduating AVTI students are available to fill the positions.

PROPOSED RULES

The above information shall be included in the proposal to the Division of Vocational-Technical Education.

5. CETA prime sponsors shall be included in planning to provide for the utilization of CETA funds whenever the program or trainees qualify under CETA criteria.

6. The AVTI developing the program shall submit the proposal to the company for whom the training is being designed for their recommendation. A signed copy of the company's recommendation shall be included with the proposal to the Division of Vocational-Technical Education.

7. Two or more companies which have similar training needs, with a combined training need of ten or more, are eligible applicants if they agree to a combined training program.

C. Eligible reimbursable costs to the AVTI's:

1. All instructor costs, including fringe benefits.
2. Supplies needed for training.

3. Equipment purchase, lease or rental including cost of installation. Purchased equipment shall become property of the AVTI subject to the right of the Department of Education to transfer the property to another AVTI to further the purpose of the contingency fund. If so transferred the AVTI shall not retain any interest in the equipment. If equipment belonging to a company is installed the cost of installation shall not be eligible for reimbursement.

4. Building rental or lease except properties of the company for whom training is provided.

5. Upon prior approval of the Commissioner, project coordinators may be funded when the training project can not be satisfactorily handled by the adult vocational directors of the cooperating AVTI.

6. Secretarial costs directly related to the training program.

Department of Public Safety Merit System

Notice of Renumeration

Previously, all Merit System Rules have been referred to as 11 MCAR §§ 1.090-1.094, and 11 MCAR §§ 1.116-1.141. Effective with this publication in the *State Register*, these rules are being changed to conform to the current numbering system used by the Department of Public Safety. A complete list of Merit System Rules, converted to the new numbers, follows:

11 MCAR § 1.090 Definitions. is now 11 MCAR § 1.2090 Definitions.

11 MCAR § 1.091 Statement of policy. is now 11 MCAR § 1.2091 Statement of policy.

11 MCAR § 1.092 Organization. is now 11 MCAR § 1.2092 Organization.

11 MCAR § 1.093 Classification Plan. is now 11 MCAR § 1.2093 Classification Plan.

11 MCAR § 1.094 Compensation Plan. is now 11 MCAR § 1.2094 Compensation Plan.

11 MCAR § 1.116 Salary adjustments and increases. is now 11 MCAR § 1.2116 Salary adjustments and increases.

11 MCAR § 1.117 Salary computation provisions for full and part-time employment, vacation and sick leave pay upon termination, partial pay periods, overtime pay and part payment from another source. is now 11 MCAR § 1.2117 Salary computation provisions for full and part-time employment, vacation and sick leave pay upon termination, partial pay periods, overtime pay and part payment from another source.

11 MCAR § 1.118 Appointments, promotions, demotions, transfers, and reinstatements. is now 11 MCAR § 1.2118 Appointments, promotions, demotions, transfers, and reinstatements.

11 MCAR § 1.119 County regulations. is now 11 MCAR § 1.2119 County regulations.

11 MCAR § 1.125 Civil defense director group. is now 11 MCAR § 1.2125 Civil Defense Director group.

11 MCAR § 1.126 Assistant Civil Defense group — county and local. is now 11 MCAR § 1.2126 Assistant Civil Defense group — county and local.

11 MCAR § 1.127 Staff positions group. is now 11 MCAR § 1.2127 Staff positions group.

11 MCAR § 1.129 Clerical. is now 11 MCAR § 1.2129 Clerical.

11 MCAR § 1.140 Compensation Plan. is now 11 MCAR § 1.2140 Compensation Plan.

11 MCAR § 1.141 Provisions for computing monthly, hourly, less-than-full-time, bi-weekly, and four week salary rates. is now 11 MCAR § 1.2141 Provisions for

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PROPOSED RULES

computing monthly, hourly, less-than-full-time, bi-weekly, and four week salary rates.

Dated this 10th day of August, 1979.

John P. Sopsic
Commissioner

Department of Public Welfare

Proposed Temporary Rule Governing Payment for Abortions

Request for Public Comment

Notice is hereby given that the Department of Public Welfare has proposed the following temporary rule for the purpose of implementing an Order of Donald D. Alsop, Judge of United States District Court, signed on August 9, 1979.

The proposed temporary rule would amend a portion of 12 MCAR § 2.047 (Medical Assistance) — Payment for Abortion Services.

All interested persons are hereby afforded the opportunity to submit their comments on the proposed rule for 20 days immediately following publication of this material in the *State Register* by writing to Robert Baird, Assistant Commissioner, Income Maintenance Bureau, Department of Public Welfare, 4th Floor, Centennial Building, St. Paul, MN 55155. The temporary rule may be revised on the basis of comments received. Any written material received shall become part of the record in the final adoption of the temporary rule.

Temporary Rule as Proposed

12 MCAR § 2.047 E.2.t. The cost of abortion services shall be paid only when the conditions under (1), (2), ~~or~~ (3), (4), or (5) are met:

(1) The abortion is necessary to prevent the death of the mother. The cost of the abortion shall be covered only if the following documentation accompanies the provider's invoice to the state agency:

(a) The signed written statement of two physicians that it was their professional judgment that the abortion was necessary to prevent the death of the mother; and

(b) The signed written statement of the recipient that she voluntarily consented to the abortion. In the event that the recipient is physically or legally incapable of providing informed consent, consent may be obtained as is otherwise provided by law.

(2) The abortion is to terminate a pregnancy which is the result of a sexual assault. The cost of the abortion shall be covered only if a report of the assault was made to a

valid law enforcement agency within 48 hours of the time the assault occurred and a signed statement from the law enforcement agency accompanies the provider's invoice to the state agency. In the event the recipient was physically unable to make the report within 48 hours of the assault, the report must have been made within 48 hours after the recipient became physically able to make the report. The statement of the law enforcement agency shall include the following information:

- (a) The name of the victim; and
- (b) The date of the alleged incident; and
- (c) The date the report was made to the law enforcement agency; and
- (d) The name and address of the person who signed the report to the law enforcement agency; and
- (e) A statement by the law enforcement agency that the report alleges at least one of the following:

(i) Circumstances existing at the time of the assault caused the recipient to have a reasonable fear of imminent great bodily harm to herself or to another.

(ii) The assailant was armed with a dangerous weapon or an article used or fashioned in a manner which led the recipient to reasonably believe it to be a dangerous weapon, and used or threatened to use the weapon or article to cause the complainant to submit.

(iii) The assailant caused personal injury to the complainant and used force or coercion to accomplish sexual penetration.

(iv) The assailant was aided or abetted by one or more accomplices and either:

(aa) An accomplice used force or coercion to cause the recipient to submit; or

(bb) An accomplice was armed with a dangerous weapon or an article used or fashioned in a manner to lead the complainant reasonably to believe it to be a dangerous weapon and used or threatened to use the weapon or article to cause the recipient to submit.

The provider's invoice shall also be accompanied by a statement, signed by the recipient, that her pregnancy resulted from the sexual assault reported, and a statement, signed by the recipient's physician, that in his/her professional opinion the length of the pregnancy at the time of the abortion was not inconsistent with the recipient's statement.

(3) The abortion is to terminate a pregnancy which is the result of incest. The cost of the abortion shall be covered only if a report of incest was made to a valid law enforcement agency prior to the time of the abortion and a signed statement from the law enforcement agency accompanies the provider's invoice to the state agency. The statement shall include the following information:

- (a) The name of the victim; and
- (b) The date of the alleged incident; and

PROPOSED RULES

(c) The date the report was made to the law enforcement agency; and

(d) The name and address of the person who signed the report to the law enforcement agency; and

(e) A statement by the law enforcement agency that the name of the relative who allegedly committed incest with the victim appears in its report.

The provider's invoice shall also be accompanied by a statement, signed by the recipient, that her pregnancy resulted from the incest reported, and a statement, signed by the recipient's physician, that in his/her professional opinion the length of the pregnancy at the time of the abortion was not inconsistent with the recipient's statement.

(4) The abortion is medically necessary, to terminate a pregnancy for therapeutic reasons due to severe and long-lasting damage to physical health of the mother if the following documentation accompanies the provider's invoice to the state agency:

(a) The signed written statement of two physicians (one of which must specify that he/she is not an "interested physician" (as defined in E.2.t.(6)(e) of this rule) certifying that on the basis of their professional judgment, severe and long-lasting physical health damage to the mother would result if the pregnancy were carried to term.

(5) The abortion is medically necessary, as certified by the same method as in (4)(a) above, to terminate a pregnancy for therapeutic reasons due to other diagnosed medical conditions such as, but not limited to, the following:

- (a) Chronic lung disease
- (b) Essential hypertension
- (c) Diabetes
- (d) Kidney disease
- (e) Heart disease
- (f) Sickle cell anemia
- (g) Pulmonary emboli

(h) Depression

(i) Hepatitis

(j) Fetal deformity

(k) Phlebitis

(l) Abnormal conditions diagnosed by amniocentesis

(m) Obesity

(6) ~~(4)~~ For the purposes of this subsection E.2.t. only, the following definitions apply:

(a) "Abortion services:" medical service performed for the purpose of terminating a pregnancy. This shall not be construed to include:

(i) drugs or devices which prevent implantation of the fertilized ovum; or

(ii) medical procedures necessary for the termination of an ectopic pregnancy.

(b) "Assailant:" person who allegedly committed the sexual assault reported to the law enforcement agency.

(c) "Incest:" sexual intercourse with another nearer in kin than first cousin, of the whole or half-blood.

(d) "Valid law enforcement agency:" an agency charged under applicable law with enforcement of the general penal statutes of the United States, or of any state or local jurisdiction.

(e) "Interested physician:" is one:

(i) Whose income is directly or indirectly affected by the fee paid for the performance of the abortion, or

(ii) Who is the spouse of, or another relative who lives with, a physician whose income is directly or indirectly affected by the fee paid for the performance of the abortion.

KEY: RULES SECTION — Underlining indicates additions to proposed rule language. **Strike outs** indicate deletions from proposed rule language. **PROPOSED RULES SECTION** — Underlining indicates additions to existing rule language. **Strike outs** indicate deletions from existing rule language. If a proposed rule is totally new, it is designated "all new material."

SUPREME COURT

Decisions Filed Friday, August 17, 1979

Compiled by John McCarthy, Clerk

48851/140 Twin City Biscuit Company vs. Allstate Insurance Company, Appellant. Hennepin County.

Limitation of coverage to a fixed dollar amount is held to apply to each of four years covered by a policy of insurance against loss caused by fraud or dishonesty.

Increase of coverage held not to apply retroactively.

Affirmed in part, reversed in part. Sheran, C. J. Took no part, Otis, J.

49072/243 Fred Lahman and Marie Lahman vs. Commissioner of Highways, Appellant. Beltrami County.

Where petitioners had water rights in a well-established waterway, which were not extinguished by a prior condemnation action, the Department of Transportation must either take whatever action is necessary to remove the obstruction to the water flowage or acquire those water rights by condemnation.

Affirmed. Sheran, C. J. Took no part, Otis, J.

48777/146 Reliance Insurance Company, Appellant, vs. Barrett Stack, Henry Gilbert Sullwold, et al, Arthur M. Holm d.b.a. Arthur M. Holm Land Surveyors. Washington County.

Where employer who owns a vehicle entrusts it to employee for business purposes without restricting its use to precise business hours, employee involved in accident during after-hours business use is deemed agent of owner under Minn. St. § 170.54.

Finding of implied consent is supported by employer's acknowledgment that he probably would have authorized the use had he been asked, the business nature of the activity; and the employer's consistent treatment of it as a business project, even though gratuitous. The finding was not rebutted by the requirement, coupled with the discretion given the employee, that the employer be informed of the truck's use.

Affirmed. Otis, J. Took no part, Todd and Wahl, JJ.

49119/249 George Robin, Royal Improvement Company, et al, Employers, Northwest Home Improvement Company and Employers Mutual Liability Insurance Company of Wisconsin, George W. Smith Construction Company and Casualty Underwriters Insurance Company, Travelers Insurance Company, et al, Insurers, Johnson's Building Mart and Allied Mutual Insurance Company, Relators, State Treasurer, Custodian of the Special Compensation Fund. Workers' Compensation Court of Appeals.

Under existing law, liability for workers' compensation benefits resulting from the occupational disease of asbestosis may not be apportioned among former employers other than the employer at the time the disease became symptomatic.

Affirmed. Otis, J.

47431 State of Minnesota vs. David Allen Or-
49368/193 scanin, Appellant. Rice County.

In proceedings upon remand, the postconviction court's finding that defendant's confession was voluntary is affirmed.

Affirmed. Rogosheske, J. Dissenting, Wahl and Yetka, JJ.

48552/82 Instrumentation Services, Inc. vs. General Resource Corp., et al, defendants and third-party plaintiffs, Appellants, Dynamic Air, Inc., third-party defendant, Durwood Schlee, third-party defendant. Hennepin County.

Third-party plaintiffs were not entitled to recovery on the theory of conspiracy in unlawful competition where they presented insufficient evidence of the existence of a conspiracy and where the record demonstrated that, in any event, they suffered no damages from the claimed conspiracy.

In the present case, the proper measure of damages a subcontractor was entitled to receive from a contractor who materially breached a subcontract, where the subcontractor had only partially completed its performance, was the full contract price minus the savings the subcontractor realized because it was not required to fully perform the contract.

Affirmed in part; reversed in part and remanded. Peterson, J.

48990 Den Mar Construction Company, et al,
49022 Appellants (48990, 49299), vs. American
49299/240 Insurance Company, Appellant (49022),
County of Marshall, Minnesota vs. American Insurance Company, Appellant (49022). Marshall County.

Even though the second lowest bidder on an awarded municipal contract furnishes a 50-percent bond rather than the required 100-percent payment bond, the contract is not invalid for the purpose of assessing damages owed by the defaulting lowest bidder.

The trial court properly refused to submit jury instructions on the issue of whether a bonding company has a duty in tort to furnish bonding to a contractor.

The trial court improperly instructed the jury concerning the bonding company's justifiable breach of an implied contract to furnish bonding to a contractor.

Affirmed in part; reversed in part; and remanded. Todd, J. Took no part, Otis, J.

47786/77 State of Minnesota vs. Arthur Lee Lindsey, Appellant. Ramsey County.

The imposition of sanctions for violations of discovery rules is a matter for the sound judgment and discretion of the trial court. In exercising this discretion the trial judge should take into account:

- (1) the reason why disclosure was not made;
- (2) the extent of prejudice to the opposing party;
- (3) the feasibility of rectifying that prejudice by a continuance;
- (4) any other relevant factors.

Here, after two separate demands by the state pursuant to Rule 9.02, subd. 1(3), Minnesota Rules of Criminal Procedure, the defense disclosed the names of only two of the eight witnesses it ultimately attempted to call at trial. On motion by the state, the trial court struck the partial testimony of the defendant's mother (an undisclosed witness) and precluded the defendant's father (another undisclosed witness) from testifying as a sanction for violation of the discovery rule. Other nondisclosed witnesses were allowed to testify.

In this case we can find no justification for this disregard of the discovery obligation. Moreover, the state was prejudiced by not knowing which witnesses were to be called and, as it was too far into the trial to consider a continuance, the court has no other meaningful sanctions at its disposal. Under these circumstances, in such a strong case where even the police witnessed the homicide, the court's order was not an abuse of discretion. In any event, as neither of defendant's parents was a witness to the crime and their testimony would have been quite unimportant, irrelevant and only cumulative — offered, as characterized by the court, "to elicit the sympathy of the jury" — any possible error resulting from the trial court's order would be harmless beyond a reasonable doubt.

The trial court did not exhibit hostility to the defense by a sua sponte objection to defense evidence on relevancy and foundational grounds.

The trial court's instructions cured any possible error resulting from the state's failure to supply the factual predicate to an impeachment question.

Affirmed. Scott, J. Concurring specially, Wahl, J., Otis, J., Yetka, J., and Rogosheske, J.

**48479 Bruce A. Clark, et al., vs. Pansy P. Clark
48480/214 and John R. Clark, Appellants, Raymond Reister, trustee. Hennepin County.**

The evidence in this case supports the factual findings of the trial court that Pansy P. Clark orally agreed to will all her property to her children, other than John, if they conveyed to her their interest in certain Hennepin County property and her share of the personal property of her husband's estate only "as was needed for her ordinary living expenses;" and that she would preserve the balance of that property for her children other than John. However, the record shows that, of the property presently in Mrs. Clark's control, only the pay-

ments remaining on the Hennepin County property contract for deed and Mrs. Clark's interest in advances to two of her children constitute proceeds from assets which Mrs. Clark agreed to preserve for her children except John. Consequently, as a factual matter, other property presently in Mrs. Clark's control is not subject to any restrictions on lifetime use or distribution.

Although Mrs. Clark cannot be ordered to execute a will, as a matter of law, the trial court may impose other equitable remedies during Mrs. Clark's lifetime to protect plaintiffs' interests.

In this case we believe that, based upon past generosity to her children, it is improper for equity to restrict the manner in which Mrs. Clark spends her money on herself. It is appropriate, however, for equity to enforce Mrs. Clark's agreement to make gifts or other advances of certain property only to plaintiffs and her daughter, Winifred. This restriction on Mrs. Clark's distribution of particular property should be enforced by use of injunctive relief as opposed to the imposition of a trust.

Affirmed in part; modified in part; and remanded. Scott, J.

49207/253 Ruby E. Nelson vs. Marlin Nelson, Appellant. Itasca County.

We decline to adopt a special rule requiring automatic submission of contributory negligence for consideration by the jury in interspousal litigation.

Where the court concluded that certain evidence was not true and therefore was not entitled to any "weight whatsoever," the court was then correct in refusing to instruct on the "emergency rule" based upon this sham evidence.

It is well settled that the trial court has broad discretion in determining whether a new trial should be granted for excessive damages and its ruling on this point will only be disturbed for a clear abuse of discretion. In this case the verdict was well within acceptable limits.

Affirmed. Scott, J. Concurring specially, Peterson, J. Took no part, Todd, J.

48078/171 George D. Hime vs. State Farm Fire & Casualty Company, Appellant. Hennepin County. (1978)

Sufficient contracts with the State of Minnesota exist in this case so that due process would not be violated by the application of Minnesota law.

Application of Minnesota law to set aside the Florida automobile liability insurance contract clause, which excluded coverage for intrafamily claims, was proper under the choice-influencing considerations set forth in *Milkovich v. Saari*, 295 Minn. 155, 203 N.W. 2d 408 (1973).

Affirmed. Wahl, J. Concurring specially, Otis, J.

STATE CONTRACTS

Pursuant to the provisions of Minn. Stat. § 16.098, subd. 3, an agency must make reasonable effort to publicize the availability of any consultant services contract or professional and technical services contract which has an estimated cost of over \$2,000.

Department of Administration procedures require that notice of any

consultant services contract or professional and technical services contract which has an estimated cost of over \$10,000 be printed in the *State Register*. These procedures also require that the following information be included in the notice: name of contract person, agency name and address, description of project and tasks, cost estimate, and final submission date of completed contract proposal.

Department of Economic Security Vocational Rehabilitation Division

Notice of Proposed Contract for Medical Consultant

The Minnesota Department of Economic Security, Division of Vocational Rehabilitation, is seeking an individual to function as the Chief Medical Consultant to provide services under contract as follows:

1. Provide technical supervision and assistance and review the work of field office medical consultants;
2. Analyze the medical service program of the Division and make recommendations for program modifications;
3. Participate in the planning, development, and conduction of inservice training for both medical consultants and DVR counseling supervisory staff in the medical aspects of Vocational Rehabilitation;
4. Assist the Agency in the development of forms, procedures and other operational materials that relate to the medical program;
5. Review individual case material in order to provide advice on diagnosis, prognosis, medical implications and functional limitations resulting from disability;
6. Represent the Agency at meetings of state and local medical societies;
7. To review and comment on individual medical plans that exceed certain specific cost limitations;
8. Assist in the recruitment and selection of field office medical consultants.

The medical consultant will be responsible to the Assistant Commissioner for Vocational Rehabilitation with primary administrative direction coming from the Director of Client Services.

The individual will be paid at a rate of \$40.00 per hour. The contract will require an average of 10 to 12 hours per week.

Inquiries and formal expressions of interest should be directed to:

William Niederloh
Director of Client Services
Division of Vocational Rehabilitation
3rd Floor Space Center
444 Lafayette Road
St. Paul, Minnesota 55101

All expressions of interest must be submitted to the person named above by September 21, 1979. The contractor will be selected from individuals expressing interest based on qualifications and appropriate experience. Documentation concerning these will be requested, if necessary.

Department of Health Family Planning Unit

Notice of Request for Proposals for Development of Statewide Family Planning Information and Referral Hotline

The Minnesota Department of Health is requesting proposals from public and private organizations to develop and implement a statewide family planning information and referral hotline. The Department prefers responders with information and referral experience. An amount not to exceed \$75,000.00 is available for this project.

Proposals must be submitted to the Minnesota Department of Health no later than 4:30 p.m., September 28, 1979.

Interested persons may obtain a Request for Proposal and further instructions by submitting a written request to:

Judi Kapuscinski, Supervisor
Family Planning Unit
Minnesota Department of Health
717 S.E. Delaware Street
Minneapolis, MN 55440

**Department of Natural
Resources
Parks and Recreation
Division**

**Notice of Request for Proposals
for Archaeological Field
Reconnaissance Surveys for
Park Development Sites**

The Minnesota Department of Natural Resources, Division of Parks and Recreation, requires the services of a qualified archaeologist or agency that meets the State Archaeologist's and State Historic Preservation Office's standards to field investigate park development sites.

The Scope of the project consists of archaeological field reconnaissance surveying in 19 State Parks, investigating approximately 44 development sites. Field reconnaissance shall be conducted with shovel testing, surface examination and other appropriate checks for determination of prehistoric/historical materials in accordance with standards issued by the Council for Minnesota Archaeology, the Minnesota Archaeologists, the National Historic Preservation Act, and Minnesota Statutes.

The estimated cost of the project is \$40,000, having a starting date of fall, 1979 and completion date of June 1, 1981.

Please indicate interest no later than September 17, 1979 to:

John Winter, State Park Resource and
Development Coordinator
Division of Parks & Recreation
Department of Natural Resources
Box 39, Centennial Building
St. Paul, Minnesota 55155
Telephone: (612) 296-4781

**Pollution Control Agency
Water Quality Division**

**Notice of Request for Proposals to
Conduct a Study of the
Wastewater Stabilization Pond
System and Ground Water
Conditions at Henning,
Minnesota**

The Pollution Control Agency seeks proposals to conduct a study of the wastewater stabilization pond system and nearby ground water and surface waters at Henning, Minnesota. The study should include determining seepage rates from the pond; quality of influent sewage, quality of sewage in the pond, and quality of ground waters and surface waters of the area; and characterization of the pond seal and soil in the vicinity of the pond. The final product would be a report presenting study methodologies and data. In as much as the data generated in this study may be used in litigation, a necessary activity for the contractor may include testimony on methodologies used and results obtained. Consideration of this activity and pretrial meetings with Agency counsel should be included in the proposal and cost breakdown.

Estimated Cost: \$16,000

The deadline date for proposals is September 17, 1979.

Questions regarding this proposal may be directed to:

Mr. Gordon W. Meyer
Minnesota Pollution Control Agency
Division of Water Quality
1935 West County Road B-2
Roseville, Minnesota 55113
(612) 296-7218

OFFICIAL NOTICES

Pursuant to the provisions of Minn. Stat. § 15.0412, subd. 6, an agency, in preparing proposed rules, may seek information or opinion from sources outside the agency. Notices of intent to solicit outside opinion must be published in the *State Register* and all interested persons afforded the opportunity to submit data or views on

the subject, either orally or in writing.

The *State Register* also publishes other official notices of state agencies, notices of meetings, and matters of public interest.

Energy Agency

Notice of Intent to Solicit Outside Information Regarding Rules Governing Petroleum Emergencies

Notice is hereby given that the Minnesota Energy Agency is seeking information, opinions, and comments from sources outside the Agency in preparing rules governing the measures the Governor may adopt during a petroleum emergency. A petroleum emergency is defined as the inability of voluntary conservation practices to alleviate shortages in petroleum. Therefore, government-mandated conservation measures and/or allocation procedures would be necessary in a petroleum emergency. These measures would be effective for 30 days and may be continued only with approval of the Minnesota State Legislature. The Agency is developing the rules pursuant to Laws of 1979, Special Session, Chapter 2, Section 17. The Agency is seeking a broad range of input and will be holding meetings with various interest groups. Anyone desiring to give information, opinions, or comments is asked to write to the Agency at the following address:

David W. Buller
980 American Center Building
150 East Kellogg Boulevard
St. Paul, Minnesota 55101

The comments should be received by October 15, 1979.

August 17, 1979

David W. Buller, Manager
Policy Analysis Activity

Department of Health Emergency Medical Services

Notice of Filing of Application for Licensure for Emergency Air Ambulance Service

On June 21, 1979, International Jet, Inc., filed application with George R. Pettersen, M.D., Commissioner of Health, for a license to operate an emergency air ambulance service with a base of operation in Lakeville, Minnesota. This

notice is made pursuant to Minn. Stat. § 144.802 (Supp. 1977). Please be advised that subd. 2 of that statute states, in part: The Commissioner may grant or deny the license 30 days after notice of the filing has been published. If the Commissioner receives a written objection to the application from any person within 20 days of the notice having been fully published, the license shall be granted or denied only after a contested case hearing has been conducted on the application. The Commissioner may elect to hold a contested case hearing if no objections to the application are received. If a timely objection is not received, the Commissioner may grant or deny the requested license based upon the information contained in the license application. If licensure is denied without hearing, the applicant, within 30 days after receiving notice of denial, may request and shall be granted a contested case hearing upon the application, at which hearing all issues will be heard de novo.

Any objections to this service, pursuant to Minn. Stat. § 144.802 (Supp. 1977) may be made in writing to George R. Pettersen, M.D., within the time period outlined by statute.

Department of Natural Resources Soil and Water Conservation Board

Notice of Rescheduling of Meeting

The Minnesota Soil and Water Conservation Board has changed the date of their regular monthly meeting from September 11 to September 7. The meeting will convene at 8 a.m. at the Winona Holiday Inn, Winona, Minnesota. The Board will resume their regular schedule on October 9, 1979.

Pollution Control Agency

Notice of Intent to Solicit Outside Opinion Regarding Proposed Amendments to Rules Affecting the Management of Solid Waste

Notice is hereby given that the Minnesota Pollution Control Agency (MPCA) has made a preliminary determination that an in-depth evaluation of rules SW 1-12 is necessary. These rules outline permit application and facility location

OFFICIAL NOTICES

requirements for solid waste handling, processing and disposal facilities and also establish operating standards for solid waste disposal facilities such as frequency of cover material, control of litter and prohibition of open burning.

Due to the local nature and significance of solid waste management problems, the MPCA believes that a high level of public participation in the rule evaluation process is necessary. Accordingly, MPCA staff is considering recommending that the MPCA Board appoint a Citizen's Advisory Committee on Solid Waste Rule Revision to review rules SW 1-12, and to develop any necessary proposed revisions to the existing rules in the form of a recommendation report to the MPCA Board. Members of this Committee will not be eligible for compensation or reimbursement of expenses incurred while serving on this committee.

The MPCA is seeking comments on the Agency's existing Solid Waste Management rules and on the scope and composition of the Advisory Committee. Nominees for service on the Committee may also be submitted.

Relevant documents which interested persons may wish to review include the following:

1. Henningson, Durham and Richardson, *Study and Investigation of Solid Waste Control for the Minnesota Pollution Control Agency*, February, 1969.

2. Proposed Federal Guidelines for Landfill Disposal of Solid Waste. 44 Fed. Reg. 5660, 40 C.F.R. § 241 (1979).

3. Draft Environmental Impact Statement on the Proposed Guidelines for Landfill Disposal of Solid Waste, 40 C.F.R. § 241 (1979).

4. Record of the Legislative Commission to Review Administrative Rules review of the Agency's solid waste rules, dated July 18, 1979.

5. Report and Appendices to the Solid and Hazardous Waste Study. Minnesota State Planning Agency (1979).

6. Certified Hearing Records of the Matter of Proposed Amendments of Minnesota Rule SW-11 Granting an Exemption for Sparsely Populated Areas from Certain Sanitary Landfill Operating Standards.

7. Tchobanoglous, Theisen, Eliassen, *Solid Wastes* (1977).

8. Brunner and Keller, *Sanitary Landfill Design and Operation* (2d ed. 1977).

9. Minnesota Pollution Control Agency, *Disposal of Residuals by Landfilling* (1978).

10. Straub, C. P., Goppers, V. M., and, DuChene A., 1977, *Water Quality Status and Trends in Minnesota — Indices for Water Supply and Ground Water Pollution*: University of Minnesota Water Resources Research Center Bulletin 95, 144 p.

11. Minnesota Pollution Control Agency, *Resource Recovery* (1979).

12. *Leachate Damage Assessment, Case Study of the Peo-*

ples Avenue Solid Waste Disposal Site in Rockford, Illinois, and Leachate Damage Assessment, Case Study of the Sayville Solid Waste Disposal Site in Islip, New York, both dated June, 1976, USEPA.

13. Minnesota Pollution Control Agency, *Water Quality Monitoring at Solid Waste Disposal Sites in Minnesota*, May, 1979.

These documents are available for review at the Agency's Solid Waste Division.

Written technical statements and comments concerning these matters will be accepted for consideration until October 27, 1979, and should be addressed to:

Daniel A. Comeau
Division of Solid Waste
Minnesota Pollution Control Agency
1935 West County Road B2
Roseville, Minnesota 55113

Oral statements of technical information and comments will be accepted during regular business hours over the telephone at (612) 296-7324.

Inquiries which are of a non-technical nature or which relate to the public participation process should be addressed to:

Gail Gendler
Public Information Office
Minnesota Pollution Control Agency
1935 West County Road B2
Roseville, Minnesota 55113
(612) 296-7283

The Agency staff will review these comments, develop additional information, and make its recommendations to the Minnesota Pollution Control Agency Board.

Any written materials regarding the Agency's rules received by the Agency shall become part of the hearing record in the event revisions regarding rules SW 1-12 are proposed for promulgation. Further notice of proposed revisions to rules SW 1-12 will be given as required by law, including notice in the *State Register*.

Terry Hoffman
Executive Director

Office of the Secretary of State Election and Legislative Manual Division

Notice of Vacancy in Multi-member agencies — Application and Appointment Procedures

Notice is hereby given to the public that vacancies have occurred in multi-member state agencies, pursuant to Minn. Stat. § 15.0597, subd. 4. Application forms may be obtained at the Office of Secretary of State, 180 State Office Building, St. Paul, MN 55155 (612) 296-2805. **Application deadline is Tuesday, September 11, 1979.**

Power Plant Siting Advisory Committee: Twenty-five (25) vacancies open immediately for public members for terms expiring 6-30-80. The committee works closely with the Environmental Quality Board, making recommendations on siting and routing impact of electrical generating plant size variations, alternative methods of generating electric power, and use of existing rights of way for high voltage transmission lines. Meetings will be held 6-8 times in the year on Saturdays. Members are compensated for expenses.

The appointing authority is the Environmental Quality Board. For specific information contact Sheldon Mains, 100 Capitol Square Bldg., 500 Cedar St., St. Paul 55101; (612) 296-2757.

Metropolitan Council: One (1) vacancy open October 1, 1979 for a member representing council district 10 (St. Louis Park, New Hope, Crystal, and Golden Valley) for a term expiring January 3, 1981. The council coordinates the planning and development of the seven-county metro area, establishing policies for regional transportation, sewage, airports, parks, health and housing systems. Members are compensated \$50 per diem. Meetings are held twice a month.

The appointing authority is the Governor. For specific information, contact Rosemarie Johnson, 300 Metro Square, St. Paul 55101; (612) 291-6461.

Minnesota Board of Examiners in Watchmaking: One (1) vacancy open immediately for a public member for a term expiring January 1, 1980. The board is responsible for the licensing of watchmakers. Meetings are held twice a year. Members are compensated \$35 per diem.

The appointing authority is the Governor. For specific information, contact Helen Boyer, 5th Floor, Metro Square Bldg., St. Paul 55101; (612) 296-2197.

Department of Transportation

Notice of Application and Opportunity for Hearing Regarding Authority to Abandon and Remove Track No. 312 in Ely, Minnesota

Notice is hereby given that Duluth, Missabe and Iron Range Railway Company with offices at the Missabe Building, Duluth, Minnesota 55802 has filed a petition with the Commissioner of Transportation pursuant to Minn. Stat. §§ 219.741 and 218.041, subd. 3 (10), to abandon and remove track No. 312 in Ely, Minnesota.

The application recites among other matters that: "Track No. 312 has not been used commercially since 1965. Its last use was by a firm called Zen-Ely which is now no longer in existence.

The above proposed abandonment is in the best interest of . . . (Duluth, Missabe and Iron Range Railway Company) and will not impair the ability of . . . (Duluth, Missabe and Iron Range Railway Company) to serve the public efficiently and satisfactorily and will not result in injury or be inconvenient to the shipping public or any member thereof."

Any person may file a written objection to the proposed action by means of a letter addressed to the Commissioner of Transportation, Transportation Building, Saint Paul, Minnesota 55155, not later than the date specified below. An objection must be received on or before September 17, 1979. The objection should state specifically how the objector's interest will be adversely affected by the proposed action.

Upon receipt of a written objection, the Commissioner will, with respect to the named petitioner, set the matter down for hearing. If no objections are received, the Commissioner may grant the relief sought by the petitioner.

If this matter is set for hearing, any person who desires to become a Party to this matter must submit a timely Petition to Intervene to the Hearing Examiner pursuant to 9 MCAR § 2.210, showing how the person's legal rights, duties and privileges may be determined or affected by the decision in this case. The petition must also set forth the grounds and purposes for which intervention is sought. All parties have the right to be represented by legal counsel or any other representative of their choice. In the event the objecting party does not do so, or otherwise does not participate in the hearing, the statements contained in the application filed may be taken as true.

August 13, 1979

Richard P. Braun
Commissioner

STATE OF MINNESOTA
OFFICE OF THE STATE REGISTER

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(612) 296-8239

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